

**APR 10 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JUANA DE LEON-BORAYO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75098

Agency No. A27-211-797

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 5, 2006<sup>\*\*</sup>

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Juana De Leon-Borayo, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") order denying her motion to reopen to apply for

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

suspension of deportation under the Nicaraguan Adjustment and Central American Relief Act of 1997 (“NACARA”). We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Arrozal v. INS*, 159 F.3d 429, 432 (9th Cir. 1998), and we grant the petition for review and remand.

At the time the IJ concluded that he was statutorily barred from reopening petitioner’s case, he did not have the benefit of this court’s decision in *Albillo-De Leon v. Gonzales*, 410 F.3d 1090, 1098 (9th Cir. 2005), which holds that the September 11, 1998, deadline for filing for NACARA relief is subject to equitable tolling. We therefore remand, consistent with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam), so that the agency can determine whether or not equitable tolling is appropriate in this case.

**PETITION FOR REVIEW GRANTED; REMANDED.**